

## APPENDIX A

The pertinent provisions of the Longshoremen's and Harbor Workers' Compensation Act, 44 Stat. 1424, as amended, 33 U. S. C. 901, et seq., are as follows (as they appear in the code):<sup>10</sup>

### § 902. Definitions.

When used in this chapter—

\* \* \* \*

(14) "Child" shall include a posthumous child, a child legally adopted prior to the injury of the employee, a child in relation to whom the deceased employee stood in loco parentis for at least one year prior to the time of injury, and a stepchild or acknowledged illegitimate child dependent upon the deceased, but does not include married children unless wholly dependent on him. "Grandchild" means a child as above defined of a child as above defined. "Brother" and "sister" include stepbrothers and stepsisters, half brothers and half sisters, and brothers and sisters by adoption, but does not include married brothers nor married sisters unless wholly dependent on the employee. "Child", "grandchild", "brother", and "sister" include only persons who are under eighteen years of age, and also persons who, though eighteen years of age or over, are wholly dependent upon the deceased employee and incapable of self-support by reason of mental or physical disability.

<sup>10</sup> The section numbers of the Act as cited in the Argument, *supra*, correspond to the final two figures in the code sections.

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§ 903. Coverage.

(a) Compensation shall be payable under this chapter in respect of disability or death of an employee, but only if the disability or death results from an injury occurring upon the navigable waters of the United States (including any drydock) and if recovery for the disability or death through workmen's compensation proceedings may not validly be provided by State law. No compensation shall be payable in respect of the disability or death of—

(1) A master or member of a crew of any vessel, nor any person engaged by the master to load or unload or repair any small vessel under eighteen tons net; \* \* \*

\* \* \*

\* \* \*

§ 908. Compensation for disability.

\* \* \*

(c) Permanent partial disability: In case of disability partial in character but permanent in quality, the compensation shall be  $66\frac{2}{3}$  per centum of the average weekly wages, which shall be in addition to compensation for temporary total disability paid in accordance with subdivision (b) of this section, and shall be paid to the employee, \* \* \*

\* \* \*

(21) Other cases: In all other cases in this class of disability the compensation shall be  $66\frac{2}{3}$  per centum of the difference between his average weekly wages and his wage-earning capacity thereafter in the same employment or otherwise, payable during the continuance of such partial disability, but subject to reconsideration of the degree of such impairment by the dep-

uty commissioner on his own motion or upon application of any party in interest.

(d) \* \* \*

(3) The deputy commissioner may in his discretion require the appointment of a guardian for the purpose of receiving the compensation of the minor child. In the absence of such a requirement the appointment for such a purpose shall not be necessary.

(e) Temporary partial disability: In case of temporary partial disability resulting in decrease of earning capacity the compensation shall be two-thirds of the difference between the injured employee's average weekly wages before the injury and his wage-earning capacity after the injury in the same or another employment, to be paid during the continuance of such disability, but shall not be paid for a period exceeding five years.

(i) In cases under subdivision (c) (21) and subdivision (e) of this section, whenever the deputy commissioner determines that it is for the best interests of an injured employee entitled to compensation, he may, with the approval of the Commission, approve agreed settlements of the interested parties, discharging the liability of the employer for such compensation, notwithstanding the provisions of section 915 (b) and section 916 of this title: *Provided*, That the sum so agreed upon shall be payable in installments as provided in section 914 (b) of this title, which installments shall be subject to commutation under section 914 (j) of this title: *And pro-*

*vided further*, That if the employee should die from causes other than the injury after the Commission has approved an agreed settlement as provided for in this chapter, the sum so approved shall be payable, in the manner prescribed in this subdivision, to and for the benefit of the persons enumerated in subdivision (d) of this section.

\* \* \* \*

§ 909. Compensation for death.

If the injury causes death, the compensation shall be known as a death benefit and shall be payable in the amount and to or for the benefit of the persons following:

\* \* \* \*

(b) If there be a surviving wife or dependent husband and no child of the deceased, to such wife or dependent husband 35 per centum of the average wages of the deceased, during widowhood, or dependent widowerhood, with two years' compensation in one sum upon remarriage; and if there be a surviving child or children of the deceased, the additional amount of 10 per centum of such wages for each such child; in case of the death or remarriage of such surviving wife or dependent husband, any surviving child of the deceased employee shall have his compensation increased to 15 per centum of such wages: *Provided*, That the total amount payable shall in no case exceed  $66\frac{2}{3}$  per centum of such wages. The deputy commissioner having jurisdiction over the claim may, in his discretion, require the appointment of a guardian for the purpose of receiving the compensation of a minor child. In the absence of such a requirement the appointment of a guardian for such purposes shall not be necessary.

§ 911. Guardian for minor or incompetent.

The deputy commissioner may require the appointment by a court of competent jurisdiction, for any person who is mentally incompetent or a minor, of a guardian or other representative to receive compensation payable to such person under this chapter and to exercise the powers granted to or to perform the duties required of such person under this chapter.

§ 912. Notice of injury or death.

(a) Notice of an injury or death in respect of which compensation is payable under this chapter shall be given within thirty days after the date of such injury or death (1) to the deputy commissioner in the compensation district in which such injury occurred and (2) to the employer.

(b) Such notice shall be in writing, shall contain the name and address of the employee and a statement of the time, place, nature, and cause of the injury or death, and shall be signed by the employee or by some person on his behalf, or in case of death, by any person claiming to be entitled to compensation for such death or by a person on his behalf.

\* \* \* \*

§ 913. Time for filing of claims.

(a) The right to compensation for disability under this chapter shall be barred unless a claim therefor is filed within one year after the injury, and the right to compensation for death shall be barred unless a claim therefor is filed within one year after the death, except that if payment of compensation has been made without an award on account of such injury or death a claim may be filed within one year after

the date of the last payment. Such claim shall be filed with the deputy commissioner in the compensation district in which such injury or such death occurred.

\* \* \* \*

(c) If a person who is entitled to compensation under this chapter is mentally incompetent or a minor, the provisions of subdivision (a) shall not be applicable so long as such person has no guardian or other authorized representative, but shall be applicable in the case of a person who is mentally incompetent or a minor from the date of appointment of such guardian or other representative, or in the case of a minor, if no guardian is appointed before he becomes of age, from the date he becomes of age.

\* \* \* \*

§ 914. Payment of compensation.

(a) Compensation under this chapter shall be paid periodically, promptly, and directly to the person entitled thereto, without an award, except where liability to pay compensation is controverted by the employer.

\* \* \* \*

(d) If the employer controverts the right to compensation he shall file with the deputy commissioner on or before the fourteenth day after he has knowledge of the alleged injury or death, a notice, in accordance with a form prescribed by the commission, stating that the right to compensation is controverted, the name of the claimant, the name of the employer, the date of the alleged injury or death, and the grounds upon which the right to compensation is controverted.

\* \* \* \*



(h) The deputy commissioner (1) may upon his own initiative at any time in a case in which payments are being made without an award, and (2) shall in any case where right to compensation is controverted, or where payments of compensation have been stopped or suspended, upon receipt of notice from any person entitled to compensation, or from the employer, that the right to compensation is controverted, or that payments of compensation have been stopped or suspended, make such investigations, cause such medical examinations to be made, or hold such hearings, and take such further action as he considers will properly protect the rights of all parties.

\* \* \* \*

(j) Whenever the deputy commissioner determines that it is in the interest of justice, the liability of the employer for compensation, or any part thereof as determined by the deputy commissioner with the approval of the Commission, may be discharged by the payment of a lump sum equal to the present value of future compensation payments commuted, computed at 4 per centum true discount compounded annually. The probability of the death of the injured employee or other person entitled to compensation before the expiration of the period during which he is entitled to compensation shall be determined in accordance with the American Experience Table of Mortality, and the probability of the remarriage of the surviving wife shall be determined in accordance with the remarriage tables of the Dutch Royal Insurance Institution. The probability of the happening of any other

contingency affecting the amount or duration of the compensation shall be disregarded.

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§ 915. Invalid agreements.

(a) No agreement by an employee to pay any portion of premium paid by his employer to a carrier or to contribute to a benefit fund or department maintained by such employer for the purpose of providing compensation or medical services and supplies as required by this chapter shall be valid, and any employer who makes a deduction for such purpose from the pay of any employee entitled to the benefits of this chapter shall be guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine of not more than \$1,000.

(b) No agreement by an employee to waive his right to compensation under this chapter shall be valid.

§ 916. Assignment and exemption from claims of creditors.

No assignment, release, or commutation of compensation or benefits due or payable under this chapter, except as provided by this chapter, shall be valid, and such compensation and benefits shall be exempt from all claims of creditors and from levy, execution, and attachment or other remedy for recovery or collection of a debt, which exemption may not be waived.

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§ 919. Procedure in respect of claims.

(a) Subject to the provisions of section 913 of this title a claim for compensation may be filed with the deputy commissioner in accordance with regulations prescribed by the commission at any time after the first seven days of disability following any



injury, or at any time after death, and the deputy commissioner shall have full power and authority to hear and determine all questions in respect of such claim.

(b) Within ten days after such claim is filed the deputy commissioner, in accordance with regulations prescribed by the commission, shall notify the employer and any other person (other than the claimant), whom the deputy commissioner considers an interested party, that a claim has been filed. Such notice may be served personally upon the employer or other person, or sent to such employer or person by registered mail.

(c) The deputy commissioner shall make or cause to be made such investigations as he considers necessary in respect of the claim, and upon application of any interested party shall order a hearing thereon. If a hearing on such claim is ordered the deputy commissioner shall give the claimant and other interested parties at least ten days' notice of such hearing, served personally upon the claimant and other interested parties or sent to such claimant and other interested parties by registered mail, and shall within twenty days after such hearing is had, by order, reject the claim or make an award in respect of the claim. If no hearing is ordered within twenty days after notice is given as provided in subdivision (b), the deputy commissioner shall, by order, reject the claim or make an award in respect of the claim.

(d) At such hearing the claimant and the employer may each present evidence in respect of such claim and may be represented by any person authorized in writing for such purpose.

(e) The order rejecting the claim or making the award (referred to in this chapter as a compensation order) shall be filed in the office of the deputy commissioner, and a copy thereof shall be sent by registered mail to the claimant and to the employer at the last known address of each.

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§ 921. Review of compensation orders.

(a) A compensation order shall become effective when filed in the office of the deputy commissioner as provided in section 919 of this title, and, unless proceedings for the suspension or setting aside of such order are instituted as provided in subdivision (b) of this section, shall become final at the expiration of the thirtieth day thereafter.

(b) If not in accordance with law, a compensation order may be suspended or set aside, in whole or in part, through injunction proceedings, mandatory or otherwise, brought by any party in interest against the deputy commissioner making the order, and instituted in the Federal district court for the judicial district in which the injury occurred (or in the district court of the United States for the District of Columbia if the injury occurred in the District). The orders, writs, and processes of the court in such proceedings may run, be served, and be returnable anywhere in the United States. The payment of the amounts required by an award shall not be stayed pending final decision in any such proceeding unless upon application for an interlocutory injunction the court, on hearing, after not less than three days' notice to the parties in interest and the

deputy commissioner, allows the stay of such payments, in whole or in part, where irreparable damage would otherwise ensue to the employer. The order of the court allowing any such stay shall contain a specific finding, based upon evidence submitted to the court and identified by reference thereto, that such irreparable damage would result to the employer, and specifying the nature of the damage.

(c) If any employer or his officers or agents fails to comply with a compensation order making an award, that has become final, any beneficiary of such award or the deputy commissioner making the order, may apply for the enforcement of the order to the Federal district court for the judicial district in which the injury occurred (or to the district court of the United States for the District of Columbia if the injury occurred in the District). If the court determines that the order was made and served in accordance with law, and that such employer or his officers or agents have failed to comply therewith, the court shall enforce obedience to the order by writ of injunction or by other proper process, mandatory or otherwise, to enjoin upon such person and his officers and agents compliance with the order.

(d) Proceedings for suspending, setting aside, or enforcing a compensation order, whether rejecting a claim or making an award, shall not be instituted otherwise than as provided in this section and section 918 of this title.

§ 921a. Appearance of United States district attorney for Commission or deputy commissioner.

In any court proceeding under section 921 of this title or other provisions of this

chapter, it shall be the duty of the district attorney of the United States in the judicial district in which the case is pending to appear as attorney or counsel on behalf of the United States Employees' Compensation Commission or its deputy commissioner when either is a party to the case or interested, and to represent such commission or deputy in any court in which such case may be carried on appeal.

§ 922. Modification of awards.

Upon his own initiative, or upon the application of any party in interest, on the ground of a change in conditions or because of a mistake in a determination of fact by the deputy commissioner, the deputy commissioner may, at any time prior to one year after the date of the last payment of compensation, whether or not a compensation order has been issued, or at any time prior to one year after the rejection of a claim, review a compensation case in accordance with the procedure prescribed in respect of claims in section 919 of this title, and in accordance with such section issue a new compensation order which may terminate, continue, reinstate, increase, or decrease such compensation, or award compensation. Such new order shall not affect any compensation previously paid, except that an award increasing the compensation rate may be made effective from the date of the injury, and if any part of the compensation due or to become due is unpaid, an award decreasing the compensation rate may be made effective from the date of the injury, and any payment made prior thereto in excess of such decreased rate shall be deducted from any unpaid compensation, in such manner and by such method

as may be determined by the deputy commissioner with the approval of the Commission.

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§ 933. Compensation for injuries where third persons are liable.

(a) If on account of a disability or death for which compensation is payable under this chapter the person entitled to such compensation determines that some person other than the employer is liable in damages, he may elect, by giving notice to the deputy commissioner in such manner as the commission may provide, to receive such compensation or to recover damages against such third person.

\* \* \* \*

(h) The deputy commissioner may, if the person entitled to compensation under this chapter is a minor, make any election required under subdivision (a) of this section, or may authorize the parent or guardian of the minor to make such election.

\* \* \* \*

§ 939. Administration.

(a) Except as otherwise specifically provided, the United States Employees' Compensation Commission shall administer the provisions of this chapter, and for such purpose the commission is authorized (1) to make such rules and regulations; (2) to appoint and fix the compensation of such temporary technical assistants and medical advisers, and, subject to the provisions of the civil-service laws, to appoint, and, in accordance with sections 661-663, 664-673 and 674 of Title 5, to fix the compensation of such deputy commissioners (except deputy commissioners appointed under subdivision (a) of section 940 of this chapter)

and other officers and employees; and (3) to make such expenditures (including expenditures for personal services and rent at the seat of government and elsewhere, for law books, books of reference, periodicals, and for printing and binding) as may be necessary in the administration of this chapter. All expenditures of the commission in the administration of this chapter shall be allowed and paid as provided in section 945 of this title upon the presentation of itemized vouchers therefor approved by the commission.

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§ 940. Deputy commissioners.

(a) The commission may appoint as deputy commissioners any member of any board, commission, or other agency of a State to act as deputy commissioner for any compensation district or part thereof in such State, and may make arrangements with such board, commission, or other agency for the use of the personnel and facilities thereof in the administration of this chapter. The commission may make such arrangements as may be deemed advisable by it for the payment of expenses of such board, commission, or other agency, incurred in the administration of this chapter pursuant to this section, and for the payment of salaries to such board, commission, or other agency, or the members thereof, and may pay any amounts agreed upon to the proper officers of the State, upon vouchers approved by the commission.

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(f) Neither a deputy commissioner nor any business associate of a deputy commissioner shall appear as attorney in any proceeding under this chapter, and no deputy



commissioner shall act in any such case in which he is interested, or when he is employed by any party in interest or related to any party in interest by consanguinity or affinity within the third degree, as determined by the common law.

## APPENDIX B

Regulations governing the Administration of the Longshoremen's and Harbor Workers' Compensation Act of March 4, 1927 (20 C. F. R. Parts 31-34), Part 31—General Administrative Provisions:

\* \* \* \*

Section 31.7 *Withdrawal of claim for compensation.* Any claimant not desiring to proceed with a claim filed in case of injury or death pursuant to said Act and the regulations in this subchapter, may apply for withdrawal of the claim to the deputy commissioner with whom filed, stating the reason for such withdrawal. The deputy commissioner whose jurisdiction has been invoked by the filing of such claim shall in consideration of such application determine whether such withdrawal is for a proper purpose and for the claimant's best interest prior to authorizing such withdrawal. Any claim so withdrawn is withdrawn without prejudice to the filing of another claim subject to the provisions relating to the limitation of time in section 13 of said Act.

